



*FleetBoston Financial*

November 17, 2003

Ms. Jennifer J. Johnson  
Secretary  
Attention: Docket No. R-1156  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Mr. Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
[comments@fdic.gov](mailto:comments@fdic.gov)

Office of the Comptroller of the Currency  
Attention: Docket No. 03-21  
250 E Street, SW  
Public Information Room  
Mail Stop 1-5  
Washington, DC 20219  
[regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov)

Regulation Office  
Chief Counsel's Office  
Attention: No. 2003-48  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
[regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov)

**Re: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets**

Ladies and Gentlemen:

FleetBoston Financial Corporation ("FleetBoston") sponsors asset-backed commercial paper conduits ("ABCP") that are important tools used to serve our customers' financial needs. They serve as funding alternatives for our customers' assets and allow us to transact certain types of risk management activities for our customers. As such, we appreciate the opportunity to comment on the U.S. bank supervisory agencies' ("Agencies") interim final rule ("IFR") on the risk-based capital treatment of consolidated ABCP assets.

In response to recent abuses of special purpose entities ("SPE") where assets and liabilities were moved off corporate balance sheets without the appropriate transfer of risk, the Financial Accounting Standards Board ("FASB") has reacted by issuing Interpretation No. 46 on the Consolidation of Variable Interest Entities ("FIN 46"). It is important to note that our industry's use of ABCP conduits in the service of its customer base has not been questioned. Further, we feel that the impact on banks is not reflective of the true economic exposures.

In our view, the implementation of FIN 46 does not change any of the underlying economics or risks of ABCP conduits or a bank's risk profile; it is only a change in the accounting treatment of this activity. Also, the current regulatory capital rules already require that any risk retained by a sponsoring organization be assessed capital. Consequently, a bank's regulatory risk-based capital ratios should remain unchanged, which is the general result of the IFR. In addition to supporting this action, we would go a step further and make this a part of any final rule until superceded by the U.S. version of Basel II.

Our one major concern with the IFR is its reduction of a bank's tier 1 leverage ratio, which is caused by reflecting the impact of FIN 46, and is inconsistent with risk-based capital portion of the proposal. With a large enough decline in the leverage ratio, we believe there is the potential for triggering prompt and corrective action ("PCA") with no underlying deterioration in a bank's soundness. Therefore,

we strongly recommend that any FIN 46 effects be removed from the tier 1 leverage calculation (i.e., a treatment that is consistent with the risk-based capital calculations).

Our reasoning is based on the fact that neither the tier 1 leverage ratio nor FIN 46 is a true measure of bank safety and soundness. First, the level of balance sheet assets supported by tier 1 capital is an imprecise if not totally misleading measure of risk and therefore of a bank's soundness. For instance, the addition of low-risk assets, such as ABCP assets, to the balance sheet has the same impact on the leverage ratio as the addition of the same amount of risky "B-rated" commercial loans. As the preceding example points out, the leverage ratio is not a very risk-sensitive measure and one that has little relevance to the safety and soundness of an institution. Granted this issue exists in the current environment, but since exceptions are being proposed for the FIN 46 impact on risk-based capital ratios, we believe it should also apply to the leverage ratio.

Secondly, the FIN 46 requirement to consolidate an ABCP conduit with little risk transference overstates the risk profile of a bank. For example, is it less risky for a corporate borrower to fund assets on its balance sheet using commercial paper issued in its own name but supported by a bank back-up facility, versus the borrower selling those same assets to an ABCP conduit, which is also funded by commercial paper and supported by a bank back-up facility? We would argue that the conduit is actually less risky because of the mitigants embedded in the structure, but the conduit assets nonetheless are recognized on the bank's balance sheet implying a greater riskiness. The Agencies have recognized this issue in the risk-based capital calculations, and we urge the same treatment be given the leverage ratio.

In conclusion, we support the Agencies removal of any impact of FIN 46 from regulatory risk-based capital ratios because an institution's risk profile remains unchanged as a result of this accounting recognition. In fact, this treatment should be permanent until the implementation of the U.S. version of Basel II. Our major concern is that FIN 46 will lower a bank's tier 1 leverage ratio, which conveys misleading risk-profile information. We feel that FIN 46 should cause no change in the leverage ratio, which is accomplished by removing any non-economic, accounting effects from its calculation.

FleetBoston is prepared to provide further input to the Agencies' deliberations on this topic. Please contact Thomas Loeffler (617-434-7501 or [thomas\\_h\\_loeffler@fleet.com](mailto:thomas_h_loeffler@fleet.com)) or William Schomburg (617-434-6158 or [william\\_h\\_schomburg\\_iii@fleet.com](mailto:william_h_schomburg_iii@fleet.com)) with further questions or comments.

Sincerely,

/s/ Joseph R. Dewhirst

Joseph R. Dewhirst  
Senior Vice President and Treasurer

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**Re: Notice of Proposed Rulemaking — Capital Maintenance: Asset-Backed Commercial Paper Programs and Early Amortization Provisions**

Ladies and Gentlemen:

FleetBoston Financial Corporation ("FleetBoston") sponsors asset-backed commercial paper conduits ("ABCP") that are important tools used to serve our customers' financial and risk management needs. They serve as funding alternatives for our customers' assets and allow us to transact derivatives activities in support of our customers. In addition, our liquidity management and funding activities make extensive use of balance sheet securitizations of revolving assets that feature early amortization provisions. As such, we appreciate the opportunity to comment on the U.S. bank supervisory agencies' ("Agencies") notice of proposed rulemaking ("NPR") on the risk-based capital treatment of ABCP conduits and securitization of revolving retail assets with early amortization features.

As a general comment, we are opposed to what in our view appears to be a piecemeal implementation of Basel II (capital for ABCP liquidity facilities and securitizations early amortization feature). This is especially disturbing because the changes being proposed are adding to a bank's regulatory capital requirements without providing any of the benefits afforded in the Advanced Internal Ratings-Based Approach ("AIRB") for credit-risk capital. We therefore recommend that these proposed rules not be enacted until all of Basel II is ready to go.

Asset-Backed Commercial Paper Programs

We recommend that the proposed 20% risk-weight for liquidity facilities with maturities less than one year not be implemented at this point, but instead be addressed as part of the U.S. version of Basel II. First, there does not appear to be any empirical justification for this weighting. Historically, ABCP liquidity facilities have low loss levels that argue for minimal assignments of capital. Second, it appears

that ABCP facilities are being singled out unfairly. Why should these specific facilities be treated differently than any other less-than-one-year facility? Again, based on performance, facilities backing ABCP conduits have demonstrated a lower level of losses than other short-term facilities.

We wholeheartedly endorse the Agencies' proposal to make permanent their exclusion from risk-based capital calculations the ABCP conduit assets that are consolidated as a result of FIN 46. In our view, this treatment should also be applied to the tier 1 leverage ratio for consistency's sake. A reduction in the ratio that results from using GAAP assets implies a deterioration in a bank's safety and soundness when in fact its risk profile is unchanged.

#### Securitizations of Revolving Retail Credit Facilities With Early Amortization Provisions

This topic is being addressed as part of the U.S. version of the Basel II capital accord ("ANPR"), which we feel is the appropriate forum for this discussion. We are of the opinion that the capital required for the potential of assets returning to the balance sheet is too great. We do endorse the maximum risk-based capital provision so that an institution would not be required to hold more capital after a securitization than if the assets remained on balance sheet.

We believe that the calculations required are arbitrary. For instance, the proposal provides no foundation for dividing the distance between excess spread trapping levels and excess spread amortization levels into four equal segments. Further, this calculation is inconsistent among competitors, as excess spread is defined differently across the industry. In addition, the excess spread levels at which trapping begins are partially a function of initial spread account deposits (i.e., a larger initial deposit will lower the initial trapping level).

This calculation can also be inconsistent within an individual trust. For example, we have a credit card securitization with excess spread below 100 basis points that has a limited likelihood for early amortization due to an amendment to the structure. Also, tracking capital levels of each transaction, all with different structures and varying levels of excess spread, is unduly cumbersome.

Finally, Fleet has successfully managed a revolving commercial loan securitization program for five years, and believes there is no rationale for a distinction between this program and a retail revolving securitization.

#### Conclusion

From a regulatory capital perspective, we believe exclusion of ABCP assets that are consolidated as a result of FIN 46 is correct. This treatment should be extended to the tier 1 leverage ratio. We urge the Agencies to delay the risk-based capital treatment of ABCP liquidity facilities and securitizations of revolving retail credit facilities with early amortization features until the implementation of the U.S. version of Basel II.

FleetBoston is prepared to provide further input to the Agencies' deliberations on this topic. Please contact Thomas Loeffler (617-434-7501 or [thomas\\_h\\_loeffler@fleet.com](mailto:thomas_h_loeffler@fleet.com)) or William Schomburg (617-434-6158 or [william\\_h\\_schomburg\\_iii@fleet.com](mailto:william_h_schomburg_iii@fleet.com)) with further questions or comments.

Sincerely,

/s/ Joseph R. Dewhirst

Joseph R. Dewhirst  
Senior Vice President and Treasurer

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